

## REMARKS

### Summary of the Examiner's Actions

The examiner rejected Claims 1-14 and 16-20 under 35 U.S.C. § 102(b) as being anticipated by Crawford, et al., U.S. Patent Number 4,008,350 ("Crawford."). Applicant acknowledges the rejection under 35 U.S.C. § 102(b).

### Rejections under 35 U.S.C. § 102(b)

The examiner rejected Claims 1-14 and 16-20 under 35 U.S.C. § 102(b). Section 2131 of the Manual of Patent Examining Procedure describes the basis for anticipation under 35 U.S.C. § 102. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim. *In re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990).

With respect to Claim 1, the Examiner states:

Crawford teaches a foot covering for enclosing a foot instep, heel [sic] and ankle while wearing footwear lacking an enclosed heel [sic] (10). A sock including a first fabric layer (12,14) having respective toe, instep and heel base portions sized to enclose the wearer's foot inserted through a sock opening extended above the heel base portion (figure 1). The first fabric layer (12, 14) is composed of a thin elastic material and includes a transition seam (24) circumferentially disposed across the instep portions of the first fabric layer (figures 1 and 2: column 2, lines 65-68). A second fabric material (18, 20) disposed to cover the wearer's instep, heel and ankle, the second fabric material having a leading edge attached to the transition seam (24) on the instep portion of the first fabric layer (figures 1 and 2). The second fabric material (18, 20) having a thickness greater than the first fabric layer and having an ankle portion extended a sufficient length above the heel base portion of the first fabric layer to encircle the wearer's ankle (figures 1 and 2). Whereby the thin first fabric (12, 14) encloses the wearer's forefoot and would inherently minimize stretching of footwear worn with the sock due to its nylon construction. The second fabric material (18, 20) covers the wearer's instep, heel and ankle for warmth and is capable of being worn with footwear lacking an enclosed heel.

Paper Number 2, Application Serial No. 10/757,824, at 2-3.

Crawford discloses a pressure relief padding for use with athletic footwear (e.g. ski/skate boots). Crawford does not disclose an insulated sock for use with footwear lacking an enclosed heel. Applicant discloses a first fabric material to be worn within footwear lacking an enclosed heel, and a second thicker fabric material disposed to cover the wearer's heel. The Crawford stocking includes a "sock 10 having a leg portion 12 and a foot portion 14" with an attached padding "in the ankle and shin region." Crawford, col. 2, lines 45-47. Crawford does not disclose a second fabric material disposed to cover the wearer's heel.

Claim 1 explicitly requires the second fabric material to be "disposed to cover the wearer's instep, heel, and ankle." The Crawford stocking, however, teaches a second fabric material disposed only to cover the wearer's ankle and shin region. Crawford, col. 2, lines 45-47. Because the Crawford stocking does not disclose a second fabric material disposed to cover the wearer's heel, "each and every element as set forth in the claim" is not found, either expressly or inherently, in the Crawford patent. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d at 631. Therefore, Claim 1 is not anticipated by Crawford.

Furthermore, Crawford discloses that the padding "is attached to sock 10 by means of stitching 24 at the top and bottom of the sheath." Crawford, col. 2, lines 59-65. The various figures of the Crawford patent depict a sock adapted to cover the entire foot, and a pressure relief padding sewn to cover those portions of the sock fitting the ankle and shin region. Crawford, figures 1 and 2. Because the Crawford patent discloses a continuous layer of sock beneath the padding, Crawford does not disclose a first fabric material having only toe, instep, and heel base portions, with a second fabric material forming the only covering for the wearer's heel and ankle. Accordingly, Applicants respectfully submit that the rejection of Claim 1 has been overcome.

In order to improve the readability of Claim 1, Applicant has amended Claim 1 to clarify that the first fabric material encloses only the toe and instep portions of the wearer's forefoot, and that the heel base portion of the first fabric layer merely extends beneath the wearer's heel. A second fabric material covers the wearer's instep, heel, and ankle. In this respect, the first and second materials are not "layers," in the same sense as described in Crawford. To clarify this distinction, the word "layer" as was previously found in Claim 1 has been amended to reflect the presence of first and second "materials," and reference to an additional "transition seam" element

has been eliminated. Additionally, Claim 1 was amended to correct grammatical and typographical errors originally submitted. Accordingly, Applicant respectfully requests that the examiner withdraw the rejection of Claim 1 under 35 U.S.C. § 102(b).

Claims 2-7 are directly or indirectly dependent from Claim 1 and therefore inherit each and every element of their parent claim and any intervening claim(s). Claims 2-5 and 7 have been amended to reflect those changes made in Claim 1, for the same reasons as set forth hereinabove in discussing the amendments to Claim 1. Specifically, Claims 2-5 and 7 have been amended to improve clarity and readability of the claims, and the amendments to these claims should not be interpreted to reflect on the patentability of the claimed invention. Therefore, allowance of Claims 2-7 is urged for the same reasons, among others, as set forth hereinabove in discussing the allowability of Claim 1.

With respect to Claim 8, the Examiner rejects this Claim under the same rationale as set forth in rejecting claims 1-7. Applicant repeats his position that the Crawford patent is not well taken for the same reasons, among others, as set forth hereinabove in discussing the allowability of Claims 1-7. Simply stated, the clear failure of Crawford to disclose a second fabric material disposed to cover the wearer's heel precludes the Crawford patent from anticipating the Applicant's invention. Moreover, although Claim 8 provides that the second fabric material is "attached in overlaying orientation" to an edge of the first fabric material, Applicant's invention still discloses a termination of first fabric material beneath the second fabric material. Therefore, Claim 8 is not anticipated by Crawford.

Claim 8 has been amended to improve clarity and readability, as well as to reflect changes similar to those made in Claim 1. Specifically, the word "material" was added in place of the word "layer" in order to distinguish the layers of sock and padding disclosed in Crawford from the first and second materials described in Applicant's invention. The wording of Claim 8 was amended to clarify that the first fabric material encloses the wearer's forefoot only within respective toe, forefoot, and instep portions. The second fabric material is sized to cover the heel and ankle of the wearer's foot. Accordingly, Applicant respectfully requests that the examiner withdraw the rejection of Claim 8 under 35 U.S.C. § 102(b).

Claim 9 and Claims 11-13 are directly or indirectly dependent from Claim 8 and therefore inherit each and every element of their parent claim and any intervening claim(s). Claim 9 was amended to incorporate those changes made to Claims 1-5, 7, and 8, as well as to eliminate the terms “thin” and “stretchable” as necessary in view of the requirement that the first fabric material merely have a low coefficient of friction. Claim 11 was amended to reflect the cancellation of Claim 10 and the subsequent dependence of Claim 11 upon Claim 8. Claims 12 and 13 have been amended to reflect those changes made in Claims 8, for the same reasons as set forth hereinabove in discussing the amendments to Claim 8. Allowance of Claims 9 and 11-13 is therefore urged for the same reasons, among others, as set forth above in discussing the allowability of Claims 8.

With respect to Claim 14, the Examiner rejects this Claim under the same rational as set forth in rejecting claims 1-7. Applicant repeats his position that the Crawford patent is not well taken for the same reasons, among others, as set forth hereinabove in discussing the allowability of Claims 1-7.

In Claim 14, Applicant claims a tubular sock with a second fabric layer fastened in such a configuration as to cover the heel and ankle portions of the tubular sock. Although Crawford discloses a pressure relief padding sewn to cover those portions of the sock fitting the ankle and shin region, Crawford fails to disclose a second fabric material disposed to cover the wearer’s heel. See, Crawford, figures 1 and 2. Because the Crawford stocking does not disclose a second fabric material disposed to cover the wearer’s heel, “each and every element as set forth in the claim” is not found, either expressly or inherently, in the Crawford patent. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d at 631. Therefore, the examiner’s rejection of Claim 14 under 35 U.S.C. § 102(b) has been traversed.

Claim 14 has been amended to reflect deletion of the superfluous limitation “transition seam,” and to clarify that the second fabric layer has an edge circumferentially disposed proximal of said instep portion. Accordingly, Applicant respectfully requests that the examiner withdraw the rejection of Claim 14 under 35 U.S.C. § 102(b).

Claims 16-20 are directly or indirectly dependent from Claim 14 and therefore inherit each and every element of their parent claim and any intervening claim(s). Claim 16 has been

amended to reflect the withdrawal of Claim 15 and the subsequent dependence of Claim 16 upon Claim 14. Claims 17 and 19 have been amended to reflect those changes made in Claims 1, 8, and 14, for the same reasons as set forth hereinabove in discussing the amendments to Claims 1, 8, and 14. Specifically, Claims 17 and 19 have been amended to improve clarity and readability of the claims, and the amendments to these claims should not be interpreted to reflect on the patentability of the claimed invention. Allowance of Claims 16-20 is therefore urged for the same reasons, among others, as set forth above in discussing the allowability of Claims 1, 8, and 14.

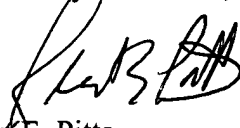
Accordingly, Applicant respectfully requests that the examiner withdraw the rejections under 35 U.S.C. § 102(b).

#### **Summary**

In view of the amendment of Claims 1-9, 11-14, 17, and 19, the representation of Claims 16, 18, and 20, the cancellation of Claim 10, without prejudice, and the arguments presented herein, it is believed that the above-identified patent application is in a condition for the issuance of a Notice of Allowance. Such action by the examiner is respectfully requested. If, however, the examiner is of the opinion that any of the drawings or other portions of the application are still not allowable, it will be appreciated if the examiner will telephone the undersigned to expedite the prosecution of the application.

Please charge any additional fees associated with this communication, or credit any overpayment, to Deposit Account No. 16-1910.

Respectfully submitted,



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